

IN THE MATTER OF LICENSE NO. 287027 MERCHANT MARINER'S DOCUMENT
No. z-1054054 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Joseph Donald BLANK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1891

Joseph Donald BLANK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 16 April 1970, an Administrative Law Judge of the United States Coast Guard at Port Arthur, Texas suspended Appellant's seaman documents and licenses for three months outright upon finding him guilty of negligence. The specifications found proved alleges that while serving as Master on board the SS AVENGER under authority of the document and license above described, on or about 26 August 1969, Appellant did wrongfully neglect his duties as Master, to wit: permitting said vessel to ground while navigating Sabine Pass Outer Bar Channel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence testimony of some witnesses.

In defense Appellant testified in hi own behalf.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specifications had been proved. He then entered an order suspending all documents and licenses issued to Appellant for a period of three months outright.

The entire decision was served on 29 December 1970. Appeal was timely filed on 20 January 1971.

FINDINGS OF FACT

On 26 August 1969, Appellant was serving as Master on board the United States SS AVENGER and acting under authority of his license and document while the ship was underway in the Sabine

Neches Canal, Texas.

AVENGER was a freighter of 594 feet, powered with a 12500 horsepower steam engine and on 25 August 1969 was loaded with wheat. While at the grain elevator she was required to depart to make room for another vessel. Since she was still undergoing repair to the forward auxiliary generator she proceeded to anchorage to complete same.

While en route off Magpecto Bend a full speed order was executed to permit clearing a barge in tow and to assure making the bend in the channel. After ten minutes at full ahead the auxiliary generator tripped out causing a loss of the plant and a resultant grounding while rounding a bend. After being out for about one minute the generator was placed back on the line and power was restored.

The pilot subsequently requested the assistance of a tug to assist in navigating the bends in the channel. Later, the pilot suggested retaining the tug until the vessel got outside (R72). Both, the Appellant and pilot felt that the tug could assist in case the overspeed trip on the auxiliary generator kicked out again.

As the AVENGER cleared the end of the jetties proceeding towards Outer Bar Channel at 40 RPM's (4-6 knots) she encountered a strong westerly set as a result of a strong flood tide and easterly winds of force 2-3. Soon thereafter the towline parted. Full ahead followed by left full rudder were then ordered. This was followed by emergency full ahead (jingles). However, the vessel continued to move towards the west side of the channel where she grounded about a minute after the towline parted. After the grounding and as the RPM's were coming up and passing 60 RPM's slow ahead was ordered. Thirty-two minutes later full astern was ordered but the vessel stayed grounded. The vessel at this time did not suffer a loss of power nor did any generator trip out nor were there any equipment failures.

AVENGER was undergoing Coast Guard inspection and one of the items which required completion involved the forward auxiliary generator. The repairs were incomplete at departure and the inspection authorities permitted the vessel to go to anchorage to complete repairs and testing. Upon departure and up to the time of the seconds grounding the vessel was operated under the usual 20-40-60 RPM, (slow, half, and full ahead maneuvering speeds), with both boilers in service and properly manned engine room. All the pre-sailing tests had been completed which included testing of the steering gear. The engine could give up to 75 RPM's in an emergency for a short duration.

The situation on the bridge between the Master and Pilot was one of complete reliance by Appellant upon the pilot. Up to the time of grounding the Appellant never gave any orders concerning the navigation of the vessel. None of the pilot's orders were ever countermanded nor questioned. When the pilot requested a tug the Appellant concurred and at this time there was some discussion. However, the record is clear that the Appellant gave full authority to the pilot to do everything possible to move vessel to anchorage. (R. 54, R. 63). His reliance is further supported by the fact he was in complete agreement with everything the pilot did, that the pilot did exactly what he was supposed to do, and that Appellant would have done the same thing under the same circumstances. (R.66)

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that;

1. The Coast Guard has not met its burden of proof of establishing negligence by substantial evidence of reliable and probative character.
2. Appellant was found negligent of a charge which was not specified as required by Coast Guard regulations.
3. Suspension of Appellant's license for a period of three months was too severe.

APPEARANCE: Standard, Weisberg, Heckerling &
Rosow by Malcolm B. Rosow, Esq.

OPINION

There appears to be confusion on the part of all parties concerned as to what is a charge and what is a specification. The charge in this case is negligence and the one and only specification alleges that Appellant did

"wrongfully neglect his duties as Master to wit:
permitting said vessel to ground while navigating Sabine
Pass Outer Bar Channel."

The investigating officer in his opening statement indicates that he would prove a neglect of duties by showing navigation without correct charts, navigation without bearings and a failure to order sufficient power.

With reference to charts I concur with Appellant in that no evidence was developed to indicate that failure to have correct charts on board contributed or in any way was related to the grounding. However, it is reasonable to conclude that had correct charts been available, the Appellant might have been made aware of the existence of Sabine Anchorage Basin, and that this knowledge might have changed the circumstance leading to the grounding. Since this wasn't developed in the testimony and since reasonable efforts were made to obtain up to date charts I cannot consider this as a neglect of duty.

With reference to the taking of proper bearings I will have to conclude that no testimony was elicited which indicated that the failure to take bearings contributed to the casualty. The Appellant and pilot knew where the vessel was and where it was going all the time. The channel was well marked and the pilot never indicated disorientation as to lights or shoreside structures. The passage from Magpecto Bend to the jetties was relatively uneventful and was a rather routine pilotage situation in a restricted waterway.

With reference to failure to order sufficient power I find that there is an abundance of substantial evidence of a reliable and probative nature to show that there was a neglect of duty and therefore negligence on the part of the Appellant.

It is a well known and accepted fact that vessels under reasonably careful and prudent navigators do not run aground in the ordinary course of things. It was reasonable for the Appellant to rely on the pilot since a pilot is presumed to have superior knowledge concerning local conditions of navigation. In this case the testimony of the pilot indicates he was aware of weather and current conditions outside the jetties and his awareness was made known to the Appellant. This, however, does not permit any Master to sit idly by and blindly follow the pilot's actions. He has a duty to question the actions of the pilot and to discuss possible eventualities. The Master had the duty of seeing to the safety of the ship and is at all times ultimately responsible. It appears that a reasonably prudent navigator would have discussed the conditions outside the jetties and that these discussions would have stimulated some thoughts on procedures to follow to exit safely. I do not concur with Appellant's view that the sole cause of the grounding lies with a parted towing hawser. I feel that the parting of the hawser was directly attributable to the failure to take the actions required by a reasonably prudent navigator.

Counsel relies heavily on the fact that the Appellant relied completely upon the pilot's expertise. This is well documented in the record and is noted in my findings. Great reliance is placed

upon the fact that there was no danger until the bow cleared the jetties and was swept westward; and that Appellant was required to rely upon the local knowledge of the pilot. I feel that the present case must be distinguished from those in which there exists the possible element of surprise in connection with local weather, current and trial conditions whereby a Master is forced to rely solely upon the pilot. In this case Appellant was aware of the conditions outside the jetty; he was equally aware of the potential dangers to his vessel; and he possessed personal knowledge and expertise on the capabilities of his vessel. At no time was there ever any element of surprise nor was there any lack of navigational or technical data which a reasonably prudent Master could have utilized to permit safe navigation. I think it was incumbent upon Appellant to have discussed the impending circumstances with the pilot and if not satisfied with the procedures to be followed he had a duty to take positive action. Appellant failed to anticipate a known and foreseeable cross wind and current situation which could drive his vessel sidewise and permit her to ground. His failure to anticipate is supported by his failure to take any positive action whatsoever, including the failure to use the power that was available.

I find that the record in this proceeding leaves a lot to be desired; however, I consider many of these errors to be procedural or clerical and not to have been been prejudicial to Appellant's case. For the record it should be noted that Appellant's appear brief was never signed by counsel and that the record is devoid of authority for substitute counsel on appeal.

I also find that suspension of Appellant's license for a period of three months is not too severe in light of Appellant's complete abandonment of command. The embarrassment suffered of being placed on the Coast Guard wanted list and the loss of position aboard a vessel are circumstances made necessary by the transient nature in the employment of merchant seaman. The procedures have been time tested and have been deemed workable in the maritime community. I feel the embarrassment of placing a vessel aground far outweighs any other considerations as to embarrassment.

CONCLUSIONS

It is concluded that the findings are supported by substantial evidence of a reliable and probative character to support a charge of negligence. Appellant failed to carry out his duties and obligations as Master by blindly relying on the pilot. He likewise failed to use the available power in a manner which a reasonably prudent Master would have used. I also conclude that the duties he failed to carry out were those pertaining to his right to go to

seas as a licensed officer and find no basis for proceeding against his merchant mariner's document.

ORDER

The order of the Administrative Law Judge dated at Port Arthur on 16 April 1970, is modified to provide for an OUTRIGHT SUSPENSION of his license for THREE MONTHS, and as MODIFIED, is AFFIRMED.

C. R. BENDER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C. this 10th day of October 1972.

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